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Filed : April 23, 2001

REMARKS

The June 13, 2006 Final Office Action was based on pending Claims 1-9, 11, 13-17, and 21-37. This amendment amends Claims 1-9, 11, 13-16, 21-28, and cancels Claims 17 and 29-37. Thus, after entry of this amendment, Claims 1-9, 11, 13-16, and 21-28 are pending and presented for further consideration.

The June 13, 2006 Final Office Action rejects Claims 1, 2, 4, 5, 9, 10, 13, 14, 17, 25, and 29-33 under 35 U.S.C. Section 103(a) as being obvious over U.S. Patent No. 5,892,591 to Anglin, Jr. et al ("the Anglin patent") in view of U.S. Patent No. 6,904,038, to Moon et al. ("the Moon patent"). The Office Action further rejects Claims 3, 6-8, 11, 15, 16, 21-24, 26-28, and 34-37 under 35 U.S.C. Section 103(a) as being obvious over Anglin in view of Moon, and further in view of U.S. Patent No. 6,046,824 to Barak ("the Barak patent").

REJECTION OF CLAIMS 1, 2, 4, 5, 9, 13, 14, 17, 25, and 29-33 UNDER 35 U.S.C. § 103(a)

The Office Action rejects Claims 1, 2, 4, 5, 9, 13, 14, 17, 25, and 29-33 under 35 U.S.C. Section 103(a) as being obvious over Anglin in view of Moon.

Claim 1

Anglin is silent about waiting for an available outgoing dial-up modem. See Column 6 lines 40-60. Further, Moon is also silent about waiting for an available outgoing dial-up modem. See Column 11 line 63-column 12 line 15. Neither Anglin nor Moon, alone or in combination, disclose determining availability of the outgoing dial-up modems at the second server; if none of the outgoing dial-up modems are available, applying a wait time where the wait time is based at least in part on the utilization of the outgoing dial-up modems; and determining whether at least one of the outgoing dial-up modems is available after the wait time.

In contrast, an embodiment determines availability of the outgoing dial-up modems at the second server; if none of the outgoing dial-up modems are available, applies a wait time where the wait time is based at least in part on the utilization of the outgoing dial-up modems; and determines whether at least one of the outgoing dial-up modems is available after the wait time.

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Because the references cited by the Examiner do not disclose, teach or suggest, if none of the outgoing dial-up modems are available, applying a wait time where the wait time is based at least in part on the utilization of the outgoing dial-up modems; and determining whether at least one of the outgoing dial-up modems is available after the wait time, in combination with the other recitations of independent Claim 1, Applicant asserts that Claim 1 is not obvious in view of Anglin and Moon, alone or in combination. Applicant therefore respectfully submits that Claim 1 is patentably distinguished over the cited references and Applicant respectfully requests allowance of Claim 1.

Claims 2-9, and 11

Claims 2-9 and 11, which depend from Claim 1, are believed to be patentable for the same reasons articulated above with respect to Claim 1, and because of the additional features recited therein.

Claim 13

Although Claim 13 has different language than Claim 1, Claim 13 is believed to be patentable for similar reasons (where applicable), and because of the different features recited therein.

Claims 14-16

Claims 14-16, which depend from Claim 13, are believed to be patentable for the same reasons articulated above with respect to Claim 13, and because of the additional features recited therein.

Claim 17

By this amendment, Applicant has canceled Claim 17 without prejudice or disclaimer. Accordingly, Applicant respectfully requests the Examiner to withdraw the objection under 35 U.S.C. Section 103(a) as being obvious over Anglin in view of Moon.

Claim 21

Although Claim 21 has different language than Claim 1, Claim 21 is believed to be patentable for similar reasons (where applicable), and because of the different features recited therein.

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Claims 22-24

Claims 22-24, which depend from Claim 21, are believed to be patentable for the same reasons articulated above with respect to Claim 21, and because of the additional features recited therein.

Claim 25

Although Claim 25 has different language than Claim 1, Claim 25 is believed to be patentable for similar reasons (where applicable), and because of the different features recited therein.

Claims 26-28

Claims 26-28, which depend from Claim 25, are believed to be patentable for the same reasons articulated above with respect to Claim 25, and because of the additional features recited therein.

Claims 29-33

By this amendment, Applicant has canceled Claims 29-33 without prejudice or disclaimer. Accordingly, Applicant respectfully requests the Examiner to withdraw the objection under 35 U.S.C. Section 103(a).

REJECTION OF CLAIMS 3, 6-8, 11, 15, 16, 21-24, 26-28, and 34-37 UNDER 35 U.S.C. § 103(a)

The Office Action rejects Claims 3, 6-8, 11, 15, 16, 21-24, 26-28, and 34-37 under 35 U.S.C. Section 103(a) as being obvious over Anglin in view of Moon and further in view of Barak.

Claims 3, 6-8, and 11

Claims 3, 6-8, and 11, which depend from Claim 1, are believed to be patentable for the same reasons articulated above with respect to Claim 1, and because of the additional features recited therein.

Claims 15 and 16

Claims 15 and 16, which depend from Claim 13, are believed to be patentable for the same reasons articulated above with respect to Claim 13, and because of the additional features recited therein.

Claim 21

Anglin is silent about waiting for an available outgoing dial-up modem. See Column 6 lines 40-60. Further, Moon is also silent about waiting for an available outgoing dial-up modem. See Column 11 line 63-column 12 line 15. Further yet, Barak does not apply a wait time, where the wait time is based at least in part on a number of dial-up modems and based at least in part on a number of subscribers associated with the second server to determining when a modem is available. See Column 14 lines 13-20.

Neither Anglin, Moon nor Barak alone or in combination, disclose determining availability of each of the outgoing dial-up modems; if none of the outgoing dial-up modems are available, applying a wait time, where the wait time is based at least in part on a number of dial-up modems and based at least in part on a number of subscribers associated with the second server; and determining availability of each of the outgoing dial-up modems after the wait time.

In contrast, an embodiment determines availability of each of the outgoing dial-up modems; if none of the outgoing dial-up modems are available, applies a wait time, where the wait time is based at least in part on a number of dial-up modems and based at least in part on a number of subscribers associated with the second server; and determines availability of each of the outgoing dial-up modems after the wait time.

Because the references cited by the Examiner do not disclose, teach or suggest determining availability of each of the outgoing dial-up modems; if none of the outgoing dial-up modems are available, applying a wait time, where the wait time is based at least in part on a number of dial-up modems and based at least in part on a number of subscribers associated with the second server; and determining availability of each of the outgoing dial-up modems after the wait time, in combination with the other recitations of independent Claim 21, Applicant asserts that Claim 21 is not obvious in view of Anglin, Moon, and Barak, alone or in combination. Applicant therefore respectfully submits that Claim 21 is patentably distinguished over the cited references and Applicant respectfully requests allowance of Claim 21.

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Claims 22-24

Claims 22-24, which depend from Claim 21, are believed to be patentable for the same reasons articulated above with respect to Claim 21, and because of the additional features recited therein.

Claims 26-28

Claims 26-28, which depend from Claim 25, are believed to be patentable for the same reasons articulated above with respect to Claim 25, and because of the additional features recited therein.

Claims 34-37

By this amendment, Applicant has canceled Claims 34-37 without prejudice or disclaimer. Accordingly, Applicant respectfully requests the Examiner to withdraw the objection under 35 U.S.C. Section 103(a).

CONCLUSION

Although amendments and cancellations have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments and cancellations are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Furthermore, any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the prior art.

In view of the foregoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Examiner is cordially invited to contact the undersigned such that any remaining issues may be promptly resolved.

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Also, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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